

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

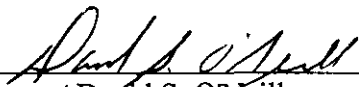
PEOPLE OF THE STATE OF ILLINOIS,)
Complainant,)
)
)
v.)
)
)
SKOKIE VALLEY ASPHALT, CO., INC.,)
EDWIN L. FREDERICK, JR., individually and as)
owner and President of Skokie Valley Asphalt)
Co., Inc., and RICHARD J. FREDERICK,)
individually and as owner and Vice President of)
Skokie Valley Asphalt Co., Inc.,)
Respondents.)

PCB 96-98
Enforcement

RECEIVED
CLERK'S OFFICE
AUG 15 2005
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S MOTION FOR PROTECTIVE ORDER AND RESPONSE TO RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S OBJECTION TO DISCOVERY AND RESPONDENTS' MOTION TO COMPEL COMPLAINANT'S RESPONSE TO DISCOVERY REQUEST, a copy of which is hereby served upon you.



David S. O'Neill

August 15, 2005

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, IL 60630-1249
(773) 792-1333

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RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S MOTION FOR PROTECTIVE ORDER AND RESPONSE TO RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S OBJECTION TO DISCOVERY AND RESPONDENTS' MOTION TO COMPEL COMPLAINANT'S RESPONSE TO DISCOVERY REQUEST

The Respondents, SKOKIE VALLEY ASPHALT, CO., INC., EDWIN L. FREDERICK, JR., individually and as owner and President of Skokie Valley Asphalt Co., Inc., and RICHARD J. FREDERICK, individually and as owner and Vice President of Skokie Valley Asphalt Co., Inc., by and through their attorney, David S. O'Neill, herein move this Board to strike the Complainant's Complainant's Motion for Protective Order and Response to Respondents Motion to Strike Complainant's Objection to Discovery and Respondent's Motion to Compel Complainant's Response to Discovery Request and in support thereof states as follows:

PROCEDURAL HISTORY

1. On April 7, 2005, the Board issued an Order in the above captioned matter. In this Order, the Board granted the Respondents' motion for extension of time to allow for limited discovery.

2. The Order states that “the Board will grant the respondents additional time in order to conduct discovery...” (Order of April 7, 2005 at 3). In the Conclusion of the Order, the Board “grants respondents’ motion for extension of time and authorizes respondents to conduct discovery on the attorney fees issue”. (Id at 4.)
3. On May 24, 2005, the Complainant sent a letter to the Respondents under the pretense of initiating a conference pursuant to Illinois Supreme Court Rule 201(k), even though the provisions of Supreme Court Rule 201(k) do not apply to this situation because the Complainant was never given leave to conduct discovery by the Board.
4. The hearing officer was copied on the May 24, 2005 letter and consequently, the letter was added to the record for this matter.
5. On n June 14, 2005 the Complainant sent another letter to the Respondents.
6. The hearing officer was also copied on the June 14, 2005 letter and consequently, the letter was added to the record for this matter.
7. On July 6, 2005, the Respondents filed separate motions to strike the Complainant’s letters of May 24, 2005 and June 14, 2005 from the record.
8. On July 20, 2005, the Complainant filed “Complainant’s Motion for Protective Order and Response to Respondents’ Motion to Strike Complainant’s Objection to Discovery and Respondents’ Motion to Compel Complainant’s Response to Discovery Request”.
9. The Complainant attached copies of both the May 24, 2005 letter and the June 14, 2005 letter to its “Complainant’s Motion for Protective Order and Response to Respondents’ Motion to Strike Complainant’s Objection to Discovery and Respondents’ Motion to Compel Complainant’s Response to Discovery Request”.

ARGUMENT TO STRIKE

10. The Board’s procedural rules make no provisions requiring the attachment of documents to motions or responses to motions filed with the Board.
11. The attachment of the letters was not necessary for the filing of the response or for the arguments presented in the response.

12. As previously argued by the Respondents in their July 6, 2005 motions to strike, the letters submitted by the Complainant should not be made part of the record in this case.
13. Unless the May 24, 2005 letter is stricken, the Complainant will be allowed to enter information into the record, that is seeded with false statements.
14. The Board's Procedural Rules do not offer any mechanism for the Respondents and their attorneys to respond to the accusations and statements in the Complainant's letter of May 24, 2005.
15. Allowing the uncontested false statements in the May 24, 2005 letter to appear in the record has the potential of prejudicing the trier of fact in this matter.
16. Unless the June 14, 2005 letter is stricken, the Complainant will be allowed to enter arguments into the record, through procedures not allowed by the Board's rules.
17. The Board's Procedural Rules do not offer any mechanism for the Respondents and their attorneys to respond to the arguments in the Complainant's letter of June 14, 2005.
18. Allowing the Complainant to present these legal arguments in the record has the potential of prejudicing the trier of fact in this matter.
19. The only reason for the Complainant to attach the letters of May 24, 2005 and June 14, 2005 is to make another attempt to introduce false, argumentative and prejudicial information into the records through means outside of the Board's Procedural Rules.
20. Because these improper materials are part of the "Complainant's Response to Respondents' Motions to Strike Complainant's Letters of May 24, 2005 and June 14, 2005 Regarding Discovery", the "Complainant's Motion for Protective Order and Response to Respondents' Motion to Strike Complainant's Objection to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request" needs to be stricken from the record.
21. The "Complainant's Motion for Protective Order and Response to Respondents' Motion to Strike Complainant's Objection to Discovery and Respondents' Motion to Compel Complainant's Response to Discovery Request" should also be stricken because the Complainant's motion for protective order is both improperly applied and improperly presented and argued.

22. Under Illinois Supreme Court Rule 201, the “court may at any time ... make a protective order, as justice requires, denying, limiting, conditioning or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage or oppression (S. Ct. Rule 201 Subparagraph©)(1).
23. In the matter before the Board, the Complainants have failed to present any argument that a protective order is required to prevent unreasonable annoyance, expense, embarrassment, disadvantage or oppression.
24. The Complainant fails to state with specificity what it is requesting the Board to protect.
25. The Complainant fails to state with specificity why a protective order is required.
26. The Complainant fails to state with specificity how it desires the Board to enforce the protective order.
27. The Complainant mischaracterizes the Respondents’ discovery requests as “abusive” (Complainant’s Motion at 8.) when the request for discovery have been reasonable and consistent with the Board’s procedural rules and orders.
28. The Complainant has failed to exercise a number of means to object to the Respondents discovery requests that would not require a protective order and extensive intervention by the Board.
29. The Complainant continues to hinder any efforts by the Respondents to resolve issues concerning discovery by continuing bad-faith and unproductive practices including issuing request for discovery not authorized by Board orders, continued attempts to file false and inflammatory documents with the Board and into the Board’s record and making claims that the Respondents refuse to participate in required Rule 201 (k) conferences.
30. Because the motion for protective order is not properly applied and not properly argued, it is difficult for the Respondents to respond to the motion and it will be difficult for the Board to rule on the motion. For this reason as well as for the reason previously stated that improper attachments were included with the filing, the Motion for Protective Order should be denied
31. In the alternative, if the Board disagrees that this motion should be stricken, the

Respondents respectfully request that the motion for protective order be denied for the reasons stated above.

Wherefore, the Respondents respectfully request the Board to strike the “Complainant’s Motion for Protective Order and Response to Respondents’ Motion to Strike Complainant’s Objection to Discovery and Respondents’ Motion to Compel Complainant’s Response to Discovery Request” from the record in its entirety or in the alternative deny the Complainant’s request for protective order.



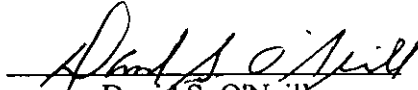
David S. O'Neill

David S. O'Neill, Attorney at Law
5487 N. Milwaukee Avenue
Chicago, Illinois 60630-1249
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S MOTION FOR PROTECTIVE ORDER AND RESPONSE TO RESPONDENTS' MOTION TO STRIKE COMPLAINANT'S OBJECTION TO DISCOVERY AND RESPONDENTS' MOTION TO COMPEL COMPLAINANT'S RESPONSE TO DISCOVERY REQUEST by hand delivery on August 15, 2005, upon the following party:

Mitchell Cohen
Environmental Bureau
Assistant Attorney General
Illinois Attorney General's Office
188 W. Randolph, 20th Floor
Chicago, IL 60601


David S. O'Neil

NOTARY SEAL

SUBSCRIBED AND SWORN TO ME this 15th

day of August, 20 05


Notary Public

